

REMARKS

Claims 1-19 rejected under 35 U.S.C. 102(b) as being anticipated by Navia (U.S. Patent No. 5,175,669) (Navia). This rejection is not applicable to the claims.

The USPTO provides in MPEP §2131 that:

“To anticipate a claim, the reference must teach every element of the claim.”

Therefore, to support these rejections with respect to claims 1-19, Navia must contain all of the above-claimed elements. However, this patent does not disclose a first member in a first orientation having a first portion and a second portion; a second member, separate from the first member, in a second orientation inverted from the first orientation, the second member being identical to the first member, and having a first portion and a second portion; the first portions of the first and second members being spaced apart; and the second portions of the first and second members including overlapping interlocking sections such that the first and second members are interconnected and form an interlocking continuous double-walled reinforcing member.

As a result, the previous rejections based on 35 U.S.C. §102(b) cannot be supported by Navia as applied to claims 1-19.

Navia teaches a single support bracket 10 constructed of a single strip 12 that includes a first end 14 and a second end 16. The single strip 12 is injection molded in an I-beam cross-section including a top channel 50 (col. 2, lines 12-24 and col. 3, lines 15-17).

The USPTO persists in their position that element 12 is both a first member and a second member. This is clearly an interpretation that directly conflicts with the description and drawings of Navia.

The present invention clearly describes and claims identical separate members 410a and 410b, see Fig. 5, and p. 5, lines 23-26.

When the separate identical members 410a and 410b are relatively inverted and joined, they include sections which interlock and overlap to form a substantially continuous rib, see Fig. 6, and p. 5, line 27 to p. 6, line 18.

Claims 20-21 rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Navia. This rejection is not applicable to the claims for the reasons set forth above and for further reasons set forth below.

As the PTO recognizes in MPEP §2142:

The Examiner bears the initial burden of factually supporting any *prima facie* conclusion of obviousness. If the examiner does not produce a *prima facie* case, the applicant is under no obligation to submit evidence of nonobviousness.

The USPTO clearly cannot establish a *prima facie* case of obviousness in connection with the amended claims for the following reasons.

35 U.S.C. §103(a) provides that:

[a] patent may not be obtained ... if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains ... (emphasis added)

Thus, when evaluating a claim for determining obviousness, all limitations of the claim must be evaluated. However, the references, alone, or in combination, do not teach a first member in a first orientation having a first portion and a second portion; a second member, separate from the first member, in a second orientation inverted from the first orientation, the second member being identical to the first member, and having a first portion and a second portion; the first portions of the first and second members being spaced apart; and the second portions of the first and second members including overlapping interlocking sections such that the first and second members are interconnected and form an interlocking continuous double-walled reinforcing member.

Therefore, it is impossible to render the subject matter of the claims as a whole obvious based on a single reference or any combination of the references, and the above explicit terms of the statute cannot be met. As a result, the USPTO's burden of factually supporting a *prima*

facie case of obviousness clearly cannot be met with respect to the claims, and a rejection under 35 U.S.C. §103(a) is not applicable.

There is still another compelling, and mutually exclusive, reason why the references cannot be combined and applied to reject the claims under 35 U.S.C. §103(a).

The PTO also provides in MPEP §2142:

[T]he Examiner must step backward in time and into the shoes worn by the hypothetical "person of ordinary skill in the art" when the invention was unknown and just before it was made. In view of all factual information, the Examiner must then make a determination whether the claimed invention "as a whole" would have been obvious at that time to that person. ...[I]mpermissible hindsight must be avoided and the legal conclusion must be reached on the basis of the facts gleaned from the prior art.

Here, the references do not teach, or even suggest, the desirability of the combination because neither teaches nor suggests a first member in a first orientation having a first portion and a second portion; a second member, separate from the first member, in a second orientation inverted from the first orientation, the second member being identical to the first member, and having a first portion and a second portion; the first portions of the first and second members being spaced apart; and the second portions of the first and second members including overlapping interlocking sections such that the first and second members are interconnected and form an interlocking continuous double-walled reinforcing member.

Thus, neither of these references provides any incentive or motivation supporting the desirability of the combination. Therefore, there is simply no basis in the art for combining the references to support a 35 U.S.C. §103(a) rejection of the claims.

In this context, the MPEP further provides at §2143.01:

The mere fact that references can be combined or modified does not render the resultant combination obvious unless the prior art also suggests the desirability of the combination. (emphasis in original)

In the above context, the courts have repeatedly held that obviousness cannot be established by combining the teachings of the prior art to produce the claimed invention, absent some teaching, suggestion or incentive supporting the combination. In the present case it is clear that the USPTO's combination arises solely from hindsight based on the invention without

any showing, suggestion, incentive or motivation in either reference for the combination as applied to the claims. Therefore, for this mutually exclusive reason, the USPTO's burden of factually supporting a *prima facie* case of obviousness clearly cannot be met with respect to the claims, and the rejection under 35 U.S.C. §103(a) is not applicable.

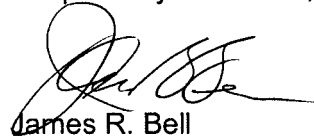
Therefore, independent claim(s) 1-21 and their respective dependent claims are submitted to be allowable.

In view of all of the above, the allowance of claims 1-21 is respectfully requested.

The amended claims are supported by the original application.

The Examiner is invited to call the undersigned at the below-listed telephone number if a telephone conference would expedite or aid the prosecution and examination of this application.

Respectfully submitted,



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